

***United States Court of Appeals
for the Second Circuit***



APPENDIX

original

77-1096

DOCKET NO. 77-1096

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

*B
P
S*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

LAMONT B. DAY,

Defendant-Appellant.

On Appeal from the United States District
Court for the Eastern District of New York

APPENDIX
FOR APPELLANT

WILLIAM C. PELSTER
919 Third Avenue
New York, New York 10022
Attorney for Lamont B. Day

Bruce A. Jackson

Of Counsel

To be argued by
William C. Pelster

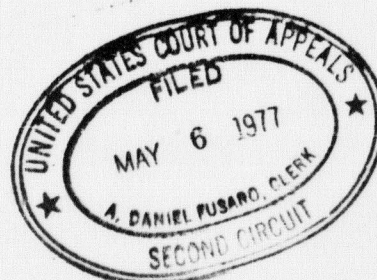


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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

AUG 19 1976

TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

LaMONT B. DAY,
ANNIE L. PRESSWOOD,
WOODROW PRESSWOOD and
CLAUDIE GRAYSON, JR.

Defendants.

----- X

I N D I C T M E N T

Cr.No.
(Title 18, U.S.C. §§1341,
1708, 1709, 371 and 2).

76CR 526

THE GRAND JURY CHARGES:

COUNT ONE

Commencing on or before March 1, 1976 and continuing up to and including April 12, 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants LaMONT B. DAY, ANNIE L. PRESSWOOD, WOODROW PRESSWOOD, CLAUDIE GRAYSON, JR. and other persons unknown to the Grand Jury did combine, conspire and agree together to commit an offense against the United States, to wit: to steal, embezzle, take, and abstract from the mail and authorized depositories for mail matter, letters and articles and things contained therein in violation of Title 18, U.S.C. §1708.

In furtherance of said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendants LaMONT B. DAY, ANNIE L. PRESSWOOD, WOODROW PRESSWOOD, and CLAUDIE GRAYSON, JR. committed the following:

OVERT ACTS

1. On or before March 1, 1976, the defendants LaMONT B. DAY, ANNIE L. PRESSWOOD and WOODROW PRESSWOOD met during which the defendant DAY instructed the defendants ANNIE L. PRESSWOOD and WOODROW PRESSWOOD that DAY would negotiate stolen checks through an Escrow Account in the name of A. W. Mustifa located at the Union National Bank

Youngstown, Ohio and instructed said defendants in the manner in which said stolen checks should be deposited in the afore-said Escrow Account, No. 020-56399-4.

2. Counts Two through Eight are hereby alleged and incorporated as additional overt acts in furtherance of the conspiracy. (Title 18, United States Code, Section 371).

COUNT TWO THROUGH FOUR

On or about the 3rd day of March, 1976, within the Eastern District of New York, while employed as a Postal Carrier at Van Brunt Station, the defendant CLAUDIE GRAYSON, JR. knowingly and wilfully embezzled the letters set forth below in Counts Two through Four, which letters were entrusted to him and which came into his possession intended to be conveyed by mail.

<u>COUNT</u>	<u>ADDRESSEE</u>
Two	Margaret Lehane For Thomas J. Ritchie 838 President Street Brooklyn, N.Y. 11215
Three	Alice E. Bannigan 354 21st Street Brooklyn, N.Y. 11215
Four	Michael DePalo 380 9th Street Brooklyn, N.Y.

(Title 18, United States Code, Section 1709).

COUNTS FIVE THROUGH SEVEN

On or about March 3, 1976, within the Eastern District of New York, the defendants ANNIE L. PRESSWOOD and WOODROW PRESSWOOD did receive from the defendant CLAUDIE GRAYSON, JR. three United States Treasury checks, set forth below in Counts Five through Seven, which checks were the contents of letters embezzled from the mail and authorized

depositories for mail matter, each defendant knowing the Treasury checks to have been so embezzled:

<u>COUNT</u>	<u>CHECK NO.</u>	<u>PAYEE</u>
Five	55 213 486	Margaret Lehane for Thomas J. Ritchie
Six	51 857 962	Alice F. Bannigan
Seven	51 858 015	Michale Depalo

(Title 18, United States Code, Sections 1708 and 2).

COUNT EIGHT

1. On or about March 9, 1976 the defendants LaMONT B. DAY, ANNIE L. PRESSWOOD and WOODROW PRESSWOOD, having devised a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme and artifice placed and caused to be placed in a post office an envelope containing the three Treasury checks set forth in Counts Five through Seven herein, said envelope being addressed to "Market Street Bank, The Union National Bank, Youngstown, Ohio, 44501", and said envelope being mailed by certified mail, return receipt requested, the return address being within the Eastern District of New York.

2. On or about March 13, 1976 the aforesaid receipt was delivered, according to its direction, within the Eastern District of New York. (Title 18, United States Code, Sections 1341 and 2).

A TRUE BILL

Joyce La Cugna
FOREMAN

David G. Trager /sax
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

No. _____

UNITED STATES DISTRICT COURT

EASTERN District of NEW YORK

Division

THE UNITED STATES OF AMERICA

vs.

LaMont B. Day, Annie L. Presswood, et al.,

Defendants.

INDICTMENT

(T. 18, U.S.C. §§1341, 1708, 1709,
371 and §2).

A true bill,

Foreman.

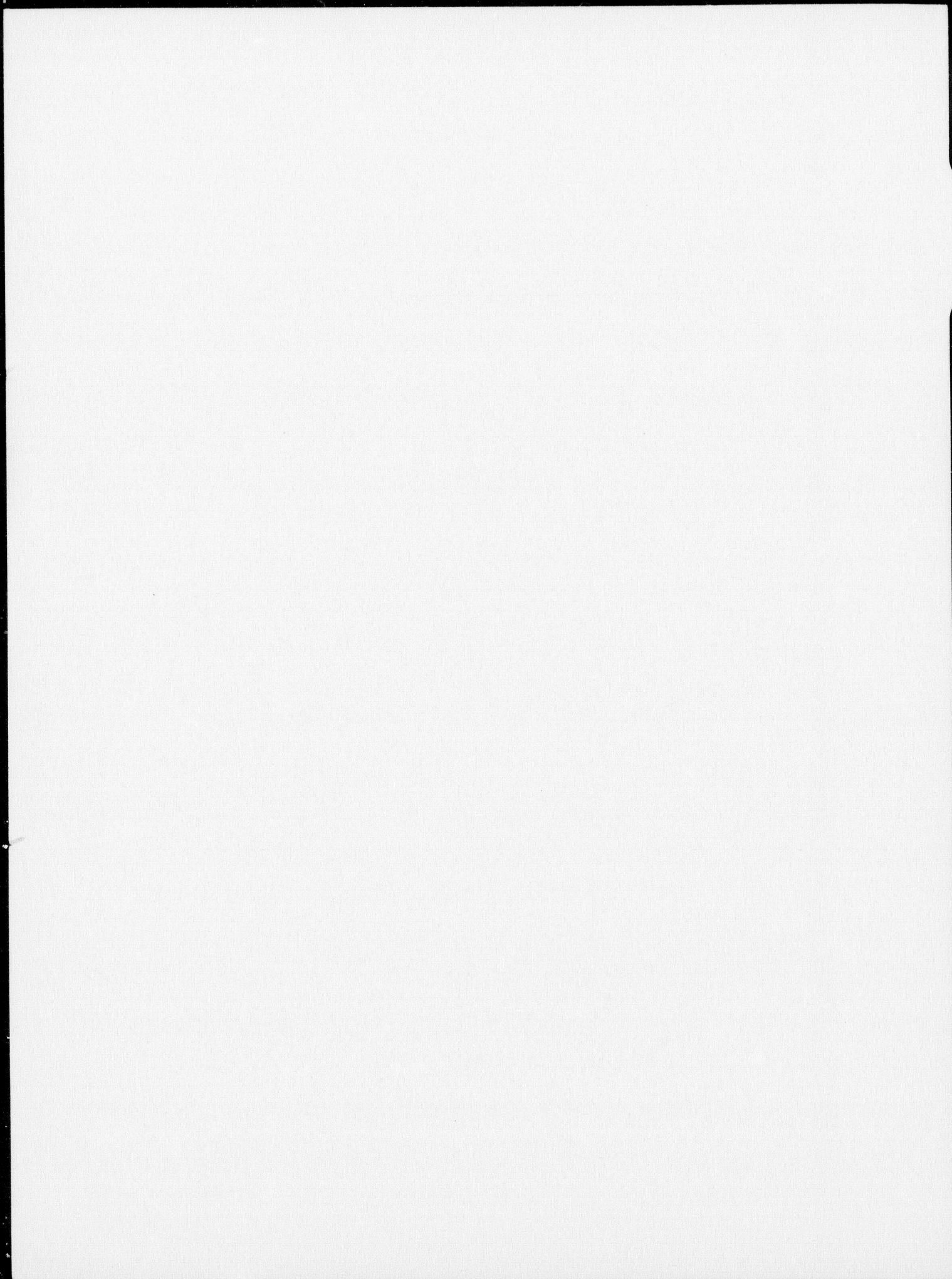
Filed in open court this _____ day
of _____, A. D. 19____

Clerk.

Bill, § _____

Douglas J. Kramer, AUSA
330-7028

GPO 902-482



APPEAL

JUDICIAL DOCKET - U.S. District Court

JUDGE/MAGISTRATE Assigned: U.S.

0720

OTHER MISDEMEANOR MIS

x 207

1

Disp. Sentence

FELONY Fel

District Office

DAY, LAMONT B.

(LAST FIRST MIDDLE)

76CR 526**8-19-76****PLATT, J**

76

526

U.S. TITLE SECTION

OFFENSES CHARGED

ORIGINAL COUNTS

18:1341,1708,1709 & 2 Did conspire to steal and abstract from the mail
U.S.Treas. checks payable to others

8

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began 8/14/76 Summons Served First Appearance 8/27/76	INDICTMENT x High Risk Date 8-19-76 Indict Waived In Charging District	ARRAIGNMENT Information ☐ 9/14/76 1st Plea 11 Final Plea	TRIAL Trial Set For Voor Dye 10/15/76 Trial Began Trial Ended 10/20/76
---	--	--	--

SUPERSEDING COUNTS

BAIL • RELI

AMT

Set

000

Date

Bail Not Made

Status Changed (See Docket)

3

Prey

Disposition of Charges

X Convicted

Acquitted

Dismissed

On Government's Motion

Search Warrant Issued Return Summons Issued Served Arrest Warrant Issued COMPLAINT OFFENSE (In Complaint)	DATE	INITIAL/NO	MAGISTRATE INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR REMOVAL HEARING WAIVED NOT WAIVED INTERVENING INDICTMENT	INITIAL/NO	OUTCOME DISM HELD FOR GJ OR OTHER HELD FOR GJ OR OTHER HELD FOR GJ OR OTHER
---	------	------------	--	------------	---

U.S. Attorney or Asst

Douglas Kramer

ATTORNEYS

Louis Rosenthal
16 Court St., Bklyn, NY
855-2600

ANNIE PRESSWOOD 2; WOODROW PRESSWOOD 3; GRAYSON JR. 4

8-19-76 Before PRATT, J - Indictment filed - Bench Warrant Ordered/Issued.

8-27-76 Before Platt, J - case called - deft present - all motions on or before 9-17-76. Set down for status report on 9-17-76

9/14/76 Before PLATT, J. - Case called. Deft & Counsel present. Bench warrant returned/executed. Deft waives reading of Indictment and enters a plea of not guilty. Bail set at \$25,000 PRB secured by deed to house - deft to assign deed on or before 9/21/76. Motions set down for 9/17/76 at 10:00 a.m.

9/14/76 Bench warrant returned and filed executed.

9/16/76 Notice of Readiness for trial filed.

9/17/76 Before PLATT, J. - Case called. Deft and counsel present. Bail continued. Trial date set for 9/24/76 at 10:00 a.m.

9-24-76 Before Platt, J - case called - deft & counsel present - Trial set down for Oct. 12, 1976 at 10:00 a.m.

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY
9-27-76	Notice of readiness for trial filed		
12-76	Before PLATT, J.-Case called-Deft and counsel present- Adjd to 10-18-76 at 9:30 AM for trial.		
10/18/76	Before PLATT, J. - Case called. Deft & Counsel present. Trial ordered and begun. Jurors were selected and sworn. Trial continued to 10/19/76 at 10:00 a.m.		
10/19/76	Before PLATT, J.- Case called. Deft & Counsel present. On consent of both parties Alt. Juror #1 is substituted for Juror # 12. Trial resumed. Defts motion to dismiss for failure to prove a prima facia case - DENIED. Trial continued to 10/20/76 at 10:00 a.m.		
10-20-76	Before PLATT, J - case called - deft & atty present - Jury renders a verdict of guilty on counts 1 and 8 - Bail (\$25,000)secured)contd . Bail limits extended to include Ill. South Carolina and Conn. as well as New York and Ohio. Deft to continue to report to Pre-Trial Services. Sentence adjd without date.		
10-26-76	By Platt, J.- Order of Sustenance dated 10-20-76 - Filed.		
10-26-76	By Platt, U.- Order of Sustenance dated 10-20-76 - Filed.		
1/14/77	Before PLATT, J.- Case called. Deft & Counsel present. Deft is sentenced to: On count 1 - for imprisonment for 4 years and deft shall become eligible for parole under Title 18, U.S.C. Sect. 4205 (b) (2) at such time as the Parole Commission may determine, and deft shall pay a fine to the U.S. in the sum of \$2,000.; On count 8 - for imprisonment for 4 years and deft shall become eligible for parole under T-18:4205 (b)(2) at such time as the Parole Commission may determine, such sentence of imprisonment to run concurrently with the sentence imposed under count 1; and deft shall pay a fine to the U.S. in the sum of \$1,000.00 - Total fine \$2,000.00. Bail continued (with additional security to be posted within one week and on condition that deft not leave the Eastern District) pending appeal. Clerk to file Notice of Appeal. Form A filed.		
1/14/77	Notice of Appeal filed.		
1/14/77	Docket entries and duplicate Copy of Notice of Appeal mailed to the C of A.		
3.7.77	Order filed received from the Court of Appeals that the record be docketed on or before 4.5.77, in default of which the appeal shall be dismissed forthwith.		
3-18-77	Voucher for expert services filed and forwarded to Admin Office for payment.(E.Karr-transcript of trial etc)		
3.21.77	Order filed received from the Court of Appeals that the record be filed and on or or before 4.4.77, in default of which the appeal shall be dismissed forthwith.		

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

DAY, LaMONT B.

76
Yr.

526
Docket No

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE	
	(a)	(b)	(c)
3.23.77	Photographer's Transcript dated October 19, 1976 filed		
3-24-77	Record on appeal certified and mailed to the court of appeals.		
	A TRUE COPY ATTEST 3/24/77 LEWIS [Signature] CLERK BY [Signature] DEPUTY CLERK		
	App. 7		

-vs-

Lemont B. Day

Docket No.

760 526

I, LEWIS ORGEL, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing copy of the Docket Entries from A to C and the original papers numbered from page 1 to 20 and exhibits numbered _____ constitute the Record on Appeal.

I further testify that the last day to file said record is

4/4/77

IN TESTIMONY WHEREOF, I have caused the seal of said Court to be hereunto affixed, at the Borough of Brooklyn in the Eastern District of New York, this 24 day of March in the year of our Lord, One Thousand Nine Hundred and seventy seven and the Independence of the United States Two Hundred and _____.

LEWIS ORGEL
Clerk

By *Lee*
Deputy Clerk

()

Rec'd 13/5/77

20

Exhibit C

Eastern Dist of NY

DEFENDANT

LAMONT B. DAY

76 CR 526

DOCKET NO.

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
1	14	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

L. Rosenthal, Esq.

(Name of Counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE, S. DIST. NOT GUILTY, N.Y.

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY. in counts 1 and 8TIME A.M.
P.M.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S. Code, 1341 & 2, 1708, 371, in that commencing on or before Mar. 1, 1976 and continuing up to and including April 12, 1976, both dates being approximate and inclusive, the defendant, with others, did combine, conspire and agree together to commit an offense against the U.S. to wit: to steal, embezzle, take and abstract from the mail and authorized depositories for mail matter, letters and articles and did devise a scheme to defraud and to obtain money by means of false and fraudulent pretenses

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General for his authorized representative for imprisonment for a period of 4 years.

SENTENCE
OR
PROBATION
ORDER

IT IS ADJUDGED on count 1 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years and defendant shall become eligible for parole under Title 18, U.S. Code, Section 4205 (b)(2) at such time as the Parole Commission may determine, and defendant shall pay a fine to the United States in the sum of \$2,000.

SPECIAL
CONDITIONS
OF
PROBATION

IT IS ADJUDGED on count 8 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years and that the defendant shall become eligible for parole under Title 18, United States Code, Section 4205 (b)(2) at such time as the Parole Commission may determine, such sentence of imprisonment imposed under count 1; and the defendant shall pay a fine to the United States in the sum of \$1,000.00 - Total fine \$2,000.00. Bail continued (with additional security to be posted within one week and on condition that defendant not leave the Eastern District) pending appeal.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set forth in the United States Code, Title 18, Section 3602, shall be imposed. The court may change the conditions of probation, reduce or extend the period of probation, and may terminate the probation period or within a maximum probation period of five years permitted by law, may rescind, suspend and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☐ U.S. Marshal

App. 9

Date

January 17, 1977

13

Exhibit D

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----x

4 UNITED STATES OF AMERICA, :
5 -against- : 76-CR-326
6 LAMONT DAY, :
7 Defendant. :

8 -----x

9
10 United States Courthouse
Brooklyn, New York

11 October 20, 1976
12 9:30 A.M.

13
14 B E F O R E :

15
16 HONORABLE THOMAS C. PLATT, U.S.D.J.

17
18
19
20
21
22 STEVEN TESSLER
23 ACTING OFFICIAL COURT REPORTER
24
25

1
2 A p p e a r a n c e s :

3 DAVID G. TRAGER, ESQ.
4 United States Attorney for the
5 Eastern District of New York

6
7 BY: DOUGLAS KRAMER, ESQ.
8 Assistant United States Attorney

9
10
11
12 LOUIS ROSENTHAUL, ESQ.
13 Attorney for Defendant.
14
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1
2 THE COURT: Good morning, ladies and gentlemen,
3 I am sorry for the slight delay. I am going to give
4 you instructions on the law, unfortunately for you
5 it's my practice to read the instructions. I realize
6 that requires more attention on your part than if I
7 were to give you instructions extemporaneously.
8 However, it does minimize the risk of error and that
9 is very important, particularly in a criminal case.

10 Let me just say this about the instructions
11 which I think may enable you to follow them a little
12 more readily.

13 They're divided into three parts, perhaps you
14 might say four parts, but essentially three parts.

15 There is general instructions at the beginning,
16 and shortly after that I discuss the two counts of
17 the indictment with you. In this particular case the
18 instructions with respect to the two counts I'll go
19 into, will be somewhat lengthy because of the nature
20 of the counts, I am going to reverse the counts, I
21 am going to give you instructions on the second count,
22 or which is actually labeled count 8, but the second
23 count against this defendant.

24 I'll discuss that with you first, and I'll
25 discuss count 1, which is the conspiracy count, last,

39 1 because the conspiracy instructions are quite lengthy
2 and I think it's easier to understand the substantive
3 counts first and the conspiracy count last, so that
4 is -- I am going to reverse the order of the dis-
5 cussion with you, but you must bear in mind that
6 I have done so, in your deliberation because count 1
7 will still be the conspiracy count and count 8 or 2,
8 as far as you are concerned, will be the substantive
9 count.
10

11 After my discussion with respect to the counts
12 of the indictment, I go back to general instructions
13 again, how you're to consider certain aspects of the
14 evidence, and finally, I give you some brief
15 instructions on how you should conduct your jury
16 deliberations.

17 Now, I'll not pause between those various
18 categories, but, I think you will know when I made a
19 shift in gears.

20 THE COURT: Now that you have heard the
21 evidence and the argument, it becomes my duty to
22 give the instructions of the Court as to the law
23 applicable to this case.

24 It is your duty as jurors to follow the law
25 as stated in the instructions of the court, and to

1 apply the rules of law, so given to the facts as you
2 find them from the evidence in the case.
3

4 You are not to single out one instruction
5 alone as starting the law, but must consider the
6 instructions as a whole.

7 Neither are you to be concerned with the
8 wisdom of any rule of law stated by the court.
9 Regardless of any opinion you may have as to what
10 the laws ought to be, it would be a violation of your
11 sworn duty to base a verdict upon any other view of
12 law than that given in the instructions of the court;
13 just as it would be a violation of your sworn duty,
14 as judges of the facts, to base a verdict upon
15 anything but the evidence in the case.

16 You must not permit yourselves to be governed
17 by sympathy, bias, prejudice, or any other considera-
18 tions not found on evidence and these instructions on
19 the law.

20 Justice to trial by jury must always depend
21 on the willingness of such individual jurors to seek
22 the truth as to the facts from the same evidence
23 presented to all the jurors: and to arrive at a
24 verdict by applying the same rules of law as given
25 in the instructions of the court.

2 You have been chosen and sworn as jurors in
3 this case to try the issues of fact presented by
4 the allegations of the indictment and the denial made
5 by the "not guilty" plea of the accused. You are to
6 perform this duty with no bias or prejudice as to
7 any party, again the law does not permit jurors to
8 be governed by sympathy and prejudice, or public
9 opinion. Both the accused and the public expect
10 that you will carefully and impartially consider all
11 the evidence in the case, follow the law as stated
12 by the court and reach a just verdict regardless of
13 consequences.

14 I am not sending the exhibits which have been
15 received in evidence with you as you retire, for your
16 deliberations. You are entitled, however, to see
17 any or all of the exhibits as you consider your
18 verdict. I suggest that you begin your deliberation
19 and then, if it would be helpful to you, you may ask
20 for any or all of the exhibits simply by sending a
21 note to me through one of the bailiffs.

22 An indictment is but a form or method of
23 accusing a defendant of a crime. It is not evidence
24 of any kind against the accused.

25 There are two types of evidence from which a

1 jury may properly find a defendant guilty of a crime.
2
3 One is direct evidence, such as the testimony of an
4 eyewitness. The other is circumstantial evidence --
5 the proof of facts and circumstances which rationally
6 imply the existence or non-existence of other facts,
7 because such other facts usually follow according to
8 the common experience of mankind. Thus, the foot-
9 prints of a man in the sand said to Robinson Crusoe
10 that there was another man with him on the desert
11 island, and indeed, there was, the man Friday.

12 Thsu, on the one hand you may have direct
13 evidence of the issue and on the other hand you may
14 have circumstantial evidence of the issue. The law
15 does not hold that one type of evidence is necessarily
16 of better quality than the other. The law requires
17 only that the government prove its case beyond a
18 reasonable doubt both on the direct and circumstantial
19 evidence. At times the jury might feel that circum-
20 stantial evidence is of better quality. At other
21 times they may feel direct evidence is of a better
22 quality. That judgment is left entirely to you.

23 As a general rule, the law makes no distinction
24 between direct and circumstantial evidence, but
25 simply requires that, before convicting a defendant,

Charge

the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

The law presumes the defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a "clean slate" -- with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So, the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. The burden never shifts to a defendant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an

1 unpleasant task. It does not mean a doubt arising
2 from the natural sympathy which we all have for
3 others. It is not necessary for the government to
4 prove the guilt of the defendant beyond all possible
5 doubt because, if that were the rule, very few
6 people would ever be convicted. It is particularly
7 impossible for a person to be absolutely sure and
8 convinced of any contraverted fact which, by its
9 nature, is not susceptible of mathematical certainty.
10 In consequence, the law says that a doubt should be
11 reasonable doubt, not a possible doubt.
12

13 A reasonable doubt is a doubt based upon
14 reason and common sense, the kind of doubt that would
15 make a reasonable person to hesitate to act. Proof
16 beyond a reasonable doubt must therefore be proof of
17 such a convincing character that you would be willing
18 to act upon it unhesitatingly in the most important
19 of your own affairs.

20 The jury will remember that the defendant is
21 never to be convicted on mere suspicion or
22 conjecture.

23 Again, a reasonable doubt means a doubt
24 sufficient to cause a prudent person to hesitate to
25 act in the most important affairs of his or her life.

1
2 It is charged in Count 2 of the indictment
3 that on or about March 9, 1976, the defendant,
4 Lamont B. Day, Ann E. Presswood and Woodrow Presswood,
5 having devised a scheme, an artifice to defraud and
6 to obtain money by means of false and fraudulent
7 pretenses, the representation and promises, for the
8 purpose of executing such a scheme and artifice
9 placed and caused to be placed in the post office
10 an envelope containing the three Treasury checks,
11 said counts five through seven herein, said envelope
12 being addressed to "Market Street Bank, the Union
13 National Bank, Youngstown, Ohio, 44501," and said
14 envelope being mailed by certified mail, return
15 receipt requested, the return address being within
16 the Eastern District of New York. On or about March
17 13, 1976 the aforesaid receipt was delivered,
18 according to its direction, within the Eastern
19 District of New York.

20 Section 1341 of Title 18 of the United States
21 code provides in pertinent part that:

22 "Whoever having devised or intending to
23 devise any scheme or artifice to defraud, or for
24 obtaining money or property by means of false or
25 fraudulent pretenses, for the purpose of executing

Charge

such a scheme or artifice or attempting to do ³¹⁴so,
places in any post office or authorized repository
for mail matter, any matter or thing, whatever to be
sent or delivered by a postal service, shall be
guilty of an offense against the laws of the United
States."

The words, "scheme," and "artifice," as used
in the statute just read, include any plan or course
of action intended to deceive others and to obtain
by false or fraudulent pretenses money or property
from persons so deceived.

A statement of representation is "false or
fraudulent" within the meaning of this statute, if
known to be untrue, or made with reckless indifference
as to its truth or falsity, and made or cause to be
made with the intent to deceive.

A "false or fraudulent representation" may be
made by statements one half truth or the concealment
of material facts as well as by affirmative statements
or acts.

There was a second section provided in Count 2
of the indictment, and that is Section 2 of Title 18
which is the so-called aiding and abetting section.
That section reads as follows:

47

1

Charge

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"Whoever commits an offense against the United States or aids, abets, conceals, commands, induces or produces wilfully cause of an act to be done which is directly performed by him or another would be an offense against the United States is punishable as a principal."

8

9

10

11

The essential elements which are required to be proved beyond a reasonable doubt in order to establish the offense charged in the indictment are as follows:

12

13

(1) The act or acts of having devised a scheme or artifice to defraud or to attempt to defraud;

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(2) The act or acts of placing or causing to be placed in an authorized depository for mail, a letter intending to be sent or delivered by the postal service for the purpose of executing this scheme.

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24

The mail fraud statute, violation of which is charged here, requires only that there be a scheme to defraud and not actual fraud, and therefore I charge you that the government is not required to prove that the government actually sustained any loss in order to establish the existence of a scheme to defraud the government.

25

The government must prove, beyond a reasonable

1 doubt, that some actual harm or injury was contemplated,
2 by the schemer. Proof that the government was
3 actually victimized, though not necessarily, may not
4 be considered as evidence of the schemer's intent to
5 defraud.
6

7 It is not necessary that the scheme contemplated
8 use of the mails as an essential element.

9 To prove a violation of the mail fraud
10 statute the government must prove beyond a
11 reasonable doubt, that the mails were used for the
12 purpose of executing this scheme. But it is not
13 necessary that the government prove that the use
14 of the mails was an essential element of the scheme.

15 You may find that the mails were used in the
16 furtherance of the scheme charged by the government
17 if you find that the mails were used to enable the
18 schemers to realize the fruits of their scheme.

19 You may also find that the mails were used
20 for the purpose of executing the scheme if you find
21 that the mails were used to enable the scheme to
22 continue and to reach fruition.

23 The letter mailed need not itself disclose
24 any intent to defraud, or show on its faith that it
25 was mailed in furtherance of a scheme to defraud.

1 But it is necessary that the evidence in the case
2 establish beyond a reasonable doubt that the letter
3 was wilfully mailed, or caused to be mailed, by one
4 of the accused, with the intent to help carry out
5 some essential steps in the execution of the scheme
6 to defraud alleged in the indictment.
7

8 The use of the United States mail as a
9 furtherance of the scheme to defraud is an essential
10 element of the offense charged. It is not necessary
11 that the use of the mails by the participants
12 themselves be contemplated or that the defendant
13 doing the actual mailing or specifically intend that
14 the mails be used. It is sufficient that the mails
15 were in fact used to carry out the scheme and that the
16 use of the mails by participants was reasonably
17 foreseeable.

18 While it is not necessary that the government
19 prove that the defendant actually used the mails
20 themselves, it is necessary that the government prove,
21 beyond a reasonable doubt, that it was reasonably
22 foreseeable that the scheme in which the defendant
23 participated would involve use of the mails. The
24 actual use of the mails in furtherance of the scheme
25 may be considered as proof that the use of the mails

1 was reasonably foreseeable. In considering whether
2 the mails were, in fact, used in furtherance of the
3 scheme you may consider the testimony of Mrs. Presswood
4 who testified that she mailed the checks in envelopes,
5 with stamps and postmarked as well as any other
6 circumstantial evidence of the use of the mails, if
7 you find such to be the fact.
8

9 To act with intent to defraud means to act
10 knowingly and with the specific intent to deceive,
11 ordinarily, for the purpose of either causing some
12 financial loss to another person or bringing about
13 some financial gain to oneself.

14 The gist of the offense charged in the
15 indictments is the wilful use of the mails in carrying
16 out or attempting to carry out a scheme to defraud
17 as charged and not the scheme itself. So the success
18 or failure of the scheme is immaterial and it is not
19 necessary to show that any person was in fact
20 defrauded.

21 Stated in another way, the indictment charged
22 the defendant with the crime of mail fraud. Before
23 he may be found guilty of this crime the government
24 must prove beyond a reasonable doubt that he
25 participated in the scheme to defraud, with the intent

1 to defraud, and that the mails were used in furtherance
2 of that scheme.
3

4 Again, a scheme to defraud under the mail
5 statute means some plan to procure money or property
6 by means of false pretenses or representation
7 calculated to deceive persons ordinarily prudent.
8 The government must prove that the defendant
9 participated in such plan and that the scheme,
10 artifice, false and fraudulent pretenses were made
11 by him or his agent, knowing they were false and
12 with the intent to defraud. It is not necessary,
13 however, that any person was actually defrauded by
14 the scheme. Nor is it necessary that the government
15 prove all the pretenses and acts charged in the
16 indictment. It is essential only that one or more
17 of them be proved to show the existence of the
18 scheme.

19 Now, on the aiding and abetting aspects of
20 the case, I read to you Section 2 of Title 18 which
21 I will read again:

22 "Whoever commits an offense against the
23 United States, or aids, abets, conceals, commands,
24 induces, or procures its commission is punishable
25 as a principal. Whoever wilfully causes an act to

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1 be done, which is directly performed by him or
2 another would be an offense against the United States
3 punishable as a principal."
4

5 The guilt of the defendant may be established
6 without proof that the accused person did the act
7 constituting the offense charged.

8 In other words, every person who wilfully
9 participates in the commission of a crime may be
10 found guilty of that offense. Participation is
11 wilfully if done voluntarily and intentionally, and
12 with specific intent to do something the law forbids,
13 or which a specific intent to fail to do something
14 the law requires to be done; that is to say, with
15 bad purpose either to disobey or to disregard the law.

16 Section 2, Title 18 of the United States
17 code provides that:

18 "Whoever commits offense against the United
19 States, or aids, abets or conceals,
20 procures its commission, is punishable as a principal.

21 Whoever wilfully causes an act to be done,
22 which is directly performed by him or another would
23 be an offense against the United States, is punishable
24 as a principal."

25 The guilt of a defendant may be established

1 without proof that the accused person
2
3 act constituting the offense charged.

4 In other words, every person who wilfully
5 participates in the commission of a crime may be
6 found guilty of that offense. Participation is wilful
7 if done voluntarily and intentionally, and with the
8 specific intent to do something the law forbids,
9 or with the specific intent to do something the law
10 requires to be done; that is to say, with bad purpose
11 either to disobey or to disregard the law.

12 In order to aid and abet another to commit a
13 crime it is necessary that the accused wilfully
14 associated himself in some way with a criminal venture
15 and wilfully participate in it as he would in something
16 he wishes to bring about; that is to say, that he
17 wilfully seeks by some act or commission of his to
18 make the criminal venture succeed.

19 An act of omission is "wilfully" done, if
20 done voluntarily and intentionally and with the specific
21 intent to do something the law forbids, or with the
22 specific intent to fail to do something the law
23 requires to be done; that is to say, with bad purpose
24 either to disobey or disregard the law.

25 You, of course, may not find any defendant guilty

1
2 unless you find beyond a reasonable doubt that every
3 element of the offense as defined in these instructions
4 was committed by some person, or persons, and that the
5 defendant participated in its commission.

6 Mere presence at the scene of the crime and
7 knowledge that the crime is being committed are not
8 sufficient to establish that the defendant aided and
9 abetted the crime, unless you find beyond a reasonable
10 doubt that the defendant was a participant and not
11 merely a knowing spectator. Guilt may not be inferred
12 from mere association with a guilty party.

13 An act is done "knowingly" if done voluntarily
14 and intentionally and not because of mistake or
15 accident or other innocent reason.

16 The purpose of adding the word "knowingly" was
17 to insure that no one would be convicted for an act
18 done because of mistake, or accident or other innocent
19 reason.

20 As stated before, with respect to an offense
21 such as charged in this case, specific intent must be
22 proved beyond a reasonable doubt before there can be
23 a conviction.

24 An act is done "wilfully" if done voluntarily
25 and intentionally, and with the specific intent to do

something the law forbids, that is to see, with bad purpose either to disobey or disregard the law.

It is charged in Count 1 of the indictment that:

In furtherance of said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendants Lamont B. Day, Annie L. Presswood, Woodrow Presswood, and Claudie Grayson, Jr. committed the following:

On or before March 4, 1976, the defendants Lamont B. Day, Annie L. Presswood, and Woodrow Presswood met, during which the defendant Day

1 instructed the defendant Annie L. Presswood, and
2 Woodrow Presswood that they would be negotiated
3 stolen checks through the escrow account in the name
4 of A. W. Mustafa located at the Union National Bank,
5 Youngstown, Ohio and instructed said defendants in
6 the manner in which said stolen checks should be
7 deposited in the aforesaid escrow account, No.020-
8 56399-4.
9

10 Section 371 of Title 18 of the United States
11 code provides that:

12 "If two or more persons conspire to commit
13 an offense against the United States, or to defraud
14 the United States, or an agency thereof in any
15 manner or any purpose and one or more of such persons
16 do enact to effect the object of the conspiracy,
17 it shall be in violation of the law.

18 Section 1708 of Title 18 of the United States
19 code provides that the following are the essential
20 elements of the law which are required to be proven
21 beyond a reasonable doubt in order to establish the
22 offense of conspiracy charged in the indictment:

23 (1) That there was an agreement of conspiracy
24 between two or more persons,

25 (2) The conspiracy was wilfully formed and

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1 existed at or about the time alleged.

2
3 (3) The conspiracy was so wilfully formed and
4 existing for the purpose of stealing, embezzling,
5 taking and abstracting from the mail unauthorized
6 depositories for mail matter, letters and articles
7 and things contained therein in violation of the law.

8 (4) That the defendant became a member of
9 the conspiracy:

10 (5) That one of the conspirators there,
11 after knowingly committed one of the overt acts
12 charged in the indictment at or about the time and
13 place alleged;

14 (6) That such overt act was knowingly done
15 in furtherance of the object of the conspiracy as
16 charged; and

17 (7) That the accused was knowingly and
18 wilfully a member of the conspiracy with the intent
19 to further one of their subjectives.

20 If the jury should find beyond a reasonable
21 doubt from the evidence in the case that the
22 existence of the conspiracy charged in the indictment
23 had been proved, and that during the existence of
24 the conspiracy, one of the overt acts alleged was
25 knowingly done by one or more of the conspirators in

1
2 furtherance of some object or purpose of the
3 conspiracy, then proof of the conspiracy offense
4 charged is complete, and it is complete as to every
5 person found by the jury to have been wilfully a
6 member of the conspiracy at the time the overt act
7 was committed.

8 Certain words are used in one of the foregoing
9 statutes and in count 1 of the indictment which
10 should be defined for you.

11 First, with respect to the word, embezzlement,
12 embezzlement is defined as "the fraudulent appropri-
13 ation of property by a person to whom such property
14 has been entrusted or into whose hands it has
15 lawfully come." To prove an embezzlement, it must be
16 proven beyond a reasonable doubt that there is :

17 (1) A trust of fiduciary relationship, the
18 property claim embezzled and embraced in the meaning
19 of the statute, that it came into possession or care
20 of the accused by virtue of his employment, for, it
21 is property of another, five, that the accused
22 dealings therewith constituted a fraudulent conversion
23 or appropriation of the same to his or her own use,
24 and six, such was the intent to deprive the owner
25 thereof.

1 With respect to the word "stealing" this word
2
3 is used to denote any dishonest transaction whereby
4 one person obtains that which rightfully belongs to
5 another and deprives the owner of the rights and
6 benefits of ownership which may or may not involve the
7 element of stealing. To steal means to take away from
8 one in unlawful possession without right, with the
9 intention to keep it wrongfully.

10 As to unlawful and wilful conversion, it may
11 consummated without any intent to keep and without any
12 wrongful taking where the initial possession by the
13 convertor was entirely lawful. The conversion may
14 also include misuse or abuse of property. It may reach
15 us in an unauthorized manner or to an unauthorized
16 extent of property placed in one's custody for
17 Money rightfully taken to one's custody may be converted
18 without any intent to keep on embezzle it merely by
19 coupling it with the custodian's own, if he was under
20 a duty to keep it separately and intact.

21 Following, with respect to the word "unlawfully"
22 abstract, the word abstract means to take or withdraw
23 from. In order to continue the offense it is necessary
24 that the money should be taken from its proper place
25 of custody without the knowledge and consent of the

1
2 proper custodian with the intent to injure or defraud
3 the custodian or deceive some officer thereof.

4 A conspiracy is a combination of two or more
5 persons, by concerted actions, to accomplish some
6 unlawful purpose. So, a conspiracy is a kind of
7 "partnership in criminal purposes" in which each
8 member becomes the agent of every other member. The
9 gist of the offense is a combination of
10 to disobey or disregard the law.

11 Mere similarity of conduct among various
12 persons and the fact that they may have associated
13 with each other, and may have assembled together and
14 discussed common aims and interests does not nec-
15 essarily establish proof of the existence of a
16 conspiracy.

17 However, the evidence in the case need not show
18 that the member entered into any express or formal
19 agreement, or that they directly, by word spoken or
20 in writing, stated between themselves what their object
21 or purpose was to be, or the details thereof, or the
22 means by which the object or purpose was to be ac-
23 complished. What the evidence in the case might show
24 beyond a reasonable doubt, in order to establish proof
25 that a conspiracy existed, is that the members in some

1
2 way or manner, or through some contrivance, positively
3 or tactly came to a mutual understanding to try to
4 accomplish a common unlawful plan.

5 The evidence in the case need not establish that
6 all the means or methods set forth in the indictment
7 were agreed upon to carry out the alleged conspiracy;
8 nor that all means or methods which were agreed upon,
9 were actually used or put into operation nor that all
10 the persons charged to have been members of the alleged
11 conspiracy were such. What the evidence indicates must
12 establish beyond a reasonable doubt is that the alleged
13 conspiracy was knowingly formed and that one or more of
14 the means or methods described in the indictment were
15 agreed upon to be used, in an effort to effect or
16 accomplish, some object or purpose of the conspiracy,
17 as charged in the indictment; and that two or more
18 persons, including one or more of the accused, were
19 knowingly members of the conspiracy charged in the
20 indictment.

21 In your consideration of the evidence in the case
22 as to the offense of conspiracy charge, you should
23 first determine whether or not the conspiracy existed,
24 as alleged in the indictment. If you conclude that a
25 conspiracy did exist, you should not determine whether

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or not each of the accused wilfully became a member of the conspiracy.

If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was wilfully formed and that the defendant wilfully became a member of the conspiracy either at its inception or afterward, that thereafter one or more of the conspirators committed one or more overt acts in furtherance of some object or purpose of the conspiracy, then there may be a conviction even though the conspirators may not have succeeded in accomplishing their common object or purpose and in fact may have failed so doing.

The extent of any defendant's participation, moreover, is not determinative of his guilt or innocence. A defendant may be convicted as a conspirator even though he may have played only a minor part in the conspiracy.

An "overt act" is any act knowingly committed by one of the conspirators, in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the

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1
2 street, or driving an automobile, or using a telephone.
3 It must, however, be an act which follows and tends
4 the accomplishment of the plan or scheme, and it must
5 be knowingly done in furtherance of some object or
6 purpose of the conspiracy charged in the indictment.

7 One may become a member of a conspiracy without
8 full knowledge of all the details of the conspiracy.
9 On the other hand, a person who has no knowledge of a
10 conspiracy, but happens to act in a way which furthers
11 some object or purpose of the conspiracy, does not
12 thereby become a conspirator.

13 Before the jury may find one or more or all of
14 the defendants or any other person has become a member
15 of the conspiracy, the evidence in the case must show
16 beyond a reasonable doubt that conspiracy was knowingly
17 formed, and that said defendant, or other person who
18 claimed to become a member wilfully participated in the
19 unlawful plan, with the intent to advance or further
20 some object or purpose of conspiracy.

21 To act or participate wilfully means to act or
22 participate voluntarily or intentionally and with
23 specific intent to do something unlawful. That is to
24 say, to act or participate with the bad purpose either
25 to disobey or to disregard the law. So, if a defendant

1
2 or any other person, with understanding of the unlawful
3 character of the plan, knowingly encourages, advises
4 or assists, for the purpose of furthering the under-
5 taking or scheme, he thereby becomes a wilful par-
6 ticipant, a conspirator.

7
8 One who wilfully joins in an existing conspiracy
9 is charged with the same responsibility as if he had
10 been one of the originators or instigators of the
11 conspiracy.

12 In determining whether the conspiracy existed, the
13 jury should consider the actions and the declamations
14 of all the alleged participants. However, in determining
15 whether a particular defendant was a member of the
16 conspiracy, if any, the jury should consider only his
17 acts and statements. He cannot be bound by the acts
18 or declamations of other participants until it is
19 established that a conspiracy existed, and that he was
20 one of its members.

21 Whenever it appears beyond a reasonable doubt
22 from the evidence in the case that a conspiracy
23 existed, and that a defendant was one of the members,
24 then the statements thereafter knowingly made and the
25 acts knowingly done, by any person likewise found to be
a member, may be considered by the jury as evidence in

1
2 the case as to the defendant found to have been a
3 member, even though the statements and acts made may
4 have occurred in the absence and without the knowledge
5 of the defendant, provided such statements and acts
6 were knowingly made and done during the continuancy of
7 such conspiracy, and in furtherance of some object or
8 purpose of the conspiracy.

9 Otherwise, an omission or terminating statement
10 made or act done outside of court, by one person, may
11 not be considered as evidence against any person who is
12 not present and did not hear the statements made, or
13 act done.

14 The indictment charges a conspiracy among the
15 defendants, all of whom are named in the indictment as
16 co-conspirators. A person cannot conspire with himself,
17 and therefore you cannot find any of the defendants
18 guilty unless you find beyond a reasonable doubt that
19 he participated in any conspiracy as charged with at
20 least one other person. With this qualification you
21 may find all of the defendants guilty, or some of the
22 defendants guilty and some not guilty, or all not guilty,
23 all in accordance with these instructions and the facts
24 defined.

25 And I instructed you as to the considerations of

1 the acts and declarations of one alleged conspirator
2 as evidence against another alleged conspirator. You
3 will not consider any such acts or declarations
4 against any defendant unless you find beyond a
5 reasonable doubt that any person doing the act or
6 making the declaration was a member of the same
7 conspiracy as was the defendant.
8

9 Intent ordinarily may not be proved directly,
10 because there is no way of fathoming or scrutinizing
11 the operation of the human mind. But you may infer
12 of the defendant's intent from the surrounding cir-
13 cumstances. You may consider any statement made and
14 done or omitted by the defendant, and all of the facts
15 and circumstances in evidence which indicate his state
16 of mind. It is ordinarily reasonable to infer that a
17 person intends a natural and probable consequences of
18 acts knowingly done or knowingly omitted.

19 The fact that the accused may have committed an
20 offense at some time is not evidence or proof, whatever
21 that at a time, the accused committed the offense
22 charged in the indictment (in summation) even though
23 both offenses are of a like nature. Evidence as to an
24 alleged earlier offense of a like nature may not,
25 therefore, be considered by the jury, in determining

1 whether the accused did the act charged in the indict-
3 ment (in summation) nor may such evidence be considered
4 for any other purpose whatever, unless the jury first
5 finds that other evidence in the case, standing alone,
6 establishes beyond a reasonable doubt that the accused
7 did the act charged in the indictment.

8 If the jury should find beyond a reasonable doubt
9 from the other evidence in the case that the accused
10 did the act charged in the indictment (in summation)
11 then the jury may consider evidence as to the alleged
12 earlier offense of a like nature in determining the
13 state of mind, knowingly or intentionally with which
14 the accused did the act charged in the indictment
15 (in summation.) And where all the elements of an
16 alleged earlier offense of a like nature are established
17 by evidence which is clear and conclusive, the jury may
18 but is not obliged to draw the inference and find that
19 in doing the crime charged in the indictment the accused
20 acted wilfully and with the intent and not because of
21 mistake or accident or other innocent reason.

22 One of the defendant's claims is that the Govern-
23 ment's accomplices -- and former witness testified
24 falsely for reasons of their own, so as to appeal or
25 insure their own freedom from imprisonment, that one or

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2 more or all of them had a specific motive against or
3 animosity towards the defendant, that their testimony
4 is unbelievable and that without their testimony the
5 Government's case must fail.

6 It is for you and you alone to determine, whether
7 or to what extent based on all the evidence such
8 witnesses are to be believed.

9 Another of the defendant's claims is that the
10 checks for contributions to his church, that he did not
11 know they were stolen, that as soon as he became aware
12 that they might not be lawful he informed the postal
13 authorities and surrendered them and that this shows
14 his innocence in this matter.

15 Statements and arguments of counsel are not
16 evidence in the case, unless made as an admission or
17 stipulation of fact. When the attorneys on both sides
18 stipulate or agree to the existence of a fact you must,
19 unless otherwise instructed, accept the stipulation as
20 evidence, and regard that fact as proof.

21 The Court may take judicial notice of certain
22 facts or events. When the Court declares it will take
23 judicial notice of some fact or event, you may accept
24 the Court's declaration as evidence, and regard as proof
25 the fact or events which have been judicially noticed,

1 but you are not required to do so since you are the
2 sole judges of the facts.
3

4 Unless you are otherwise instructed, the evidence
5 in the case always consists of the sworn testimony of
6 the witness, regardless of who may have called them
7 and all exhibits received in evidence, regardless of
8 who may have produced them, and all facts which may
9 have been admitted or stipulated; and all facts and
10 events which may have been judicially noticed; and all
11 applicable assumptions stated in these instructions.

12 Any evidence as to which objection was sustained
13 by the Court, and any evidence ordinarily stricken by
14 the Court, must be entirely disregarded.

15 Evidence does not include, however, what is
16 brought out from witnesses on cross-examination as well
17 as what is testified to on direct examination.

18 Unless you are otherwise instructed, anything you
19 may have seen or heard outside the courtroom is not
20 evidence, and must be entirely disregarded.

21 You are to consider only the evidence in the
22 case and your verdict is to be based on the evidence
23 only. But in your consideration of the evidence you
24 are not limited to the bald statement of the witness.
25 In other words, you are not limited solely to what you

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2 see and hear as the witness testified. You are per-
3 mitted to draw, from facts which you find have been
4 proved, such reasonable inferences as you feel are
5 justified in the light of existence.

6 Inferences are deductions or conclusions with
7 reason and common sense, lead the jury to draw from
8 facts which have been established by the evidence in
9 the case.

10 If a lawyer asks a witness a question which contains
11 an assertion of fact, you may not consider the
12 assertion as evidence of that fact. The lawyers'
13 statements are not evidence.

14 Evidence relating to any statements or act or
15 omission, claim to have been made or done by defendant
16 outside the court, and after a time has been committed,
17 should always be considered with caution and weighed
18 with great care; and all such evidence should be dis-
19 regarded entirely, unless the evidence in the case
20 convinces the jury beyond a reasonable doubt that the
21 statement or fact or omission was knowingly made or
22 done.

23 A statement or act or omission is "knowingly"
24 made or done, if done voluntarily and intentionally,
25 not because of mistake or accident or other innocent

reason.

In determining whether any statement or act or omission claim to have been made by defendant outside of court, and after a crime has been committed, was knowingly made or done the jury should consider the age, sex, training, education, occupation and physical and mental condition of the defendant, and his treatment while in custody or other interrogation, as shown by the evidence in the case and also all other circumstance in evidence surrounding the making of the statement or act or omission including whether, before the statement or act or omission was made or done, the defendant knew or had been told and understood that he was not obligated or required to make or do the statement or act or omission claimed to have been made or done by him; that any statement or act or omission which he might make or do could be used against him in court; that he was entitled to the assistance of counsel before making any statements, either oral or in writing or before doing any act or omission; that he was without money or means to retain counsel of his own choice, an attorney would be appointed to advise and represent him free of cost or obligation.

If the evidence in the case does not convince

1 beyond a reasonable doubt that a statement confession
2 was made voluntarily and intentionally you should
3 disregard it entirely. On the other hand, if the
4 evidence indicated does show beyond a reasonable doubt
5 that a confession was in fact voluntarily and
6 intentionally made by defendant, you may consider it
7 as evidence in the case against the defendant who
8 voluntarily and intentionally made the confession.
9

10 You, as jurors, are the sole judges of the
11 credibility of the witness and the weight their
12 testimony deserves.

13 You should carefully scrutinize all the testimony
14 given, the circumstances under which each witness has
15 testified, and every matter in evidence with tends to
16 show whether a witness is worthy of belief. Consider
17 each witness' intelligence, motive and state of mind,
18 and demeanor and manner while on the stand. Consider
19 the witness' ability to observe the matters as to
20 which he has testified and whether he impresses you
21 as having an accurate recollection of these matters.
22 Consider also the relation each witness may bear to
23 either side of the case; the manner in which each
24 witness might be affected by the verdict; and the
25 existence to which, if at all, each witness is either

1 supported or contradicted by other evidence in the
2 case.
3

4 Inconsistencies or discrepancies in the testimony
5 of a witness, or between the testimony of different
6 witnesses, may or may not cause the jury to discredit
7 such testimony. Two or more persons witnessing an
8 incident or transaction may see or hear it a different
9 way; an innocent misrecollection, like failure of
10 recollection is not an uncommon experience. In weighing
11 the effect of a discrepancy, always consider whether it
12 pertains to a matter of importance or an unimportant
13 detail, and whether the discrepancies result from an
14 innocent error or intentional falsehood. On the one
15 hand you have direct evidence of the issue and on the
16 other hand you may have circumstantial evidence of the
17 issue. The law does not hold that one type of evidence
18 is necessarily of better quality than the other. The
19 law requires only that the government prove its case
20 beyond a reasonable doubt both on the direct and
21 circumstantial evidence. At times the jury might feel
22 that circumstantial evidence is of a better quality.
23 At other times they may feel direct evidence is of
24 better quality, that judgment is left entirely to you.

25 After making your own judgment you will give the

1
2 testimony of each witness such credibility, if any,
3 as you may think it deserves.

4 The testimony of an informer provides evidence
5 against a defendant for pay, or for immunity from
6 punishment, or for personal advantage or vindication,
7 must be examined and weighed by the jury with greater
8 care than the testimony of an ordinary witness. The
9 jury must determine whether the informer's testimony
10 has been affected by interest or prejudice against the
11 defendant.

12 An accomplice is one who unites with another person
13 in the commission of a crime, voluntarily and with common
14 intent. An accomplice does not become incompetent as
15 a witness because of participation in the crime charged.
16 On the contrary, the testimony of an accomplice alone,
17 if believed by the jury, may be of sufficient weight to
18 sustain a verdict of guilty, even though not corroborated
19 or supported by other evidence. However, the jury should
20 keep in mind that such testimony is always to be received
21 with greater caution and weighed with great care.

22 You should never convict a defendant upon the
23 unsupported testimony of an alleged accomplice, unless
24 you believe that unsupported testimony beyond a reasonable
25 doubt.

1 here, so far as the record shows, they had an equal
2 opportunity to get them and absence should not affect
3 your judgment in passing on this case or in determining
4 the guilt or innocence of the defendants.
5

6 Bear in mind, of course, that the law never
7 imposes upon the defendant in a criminal case the
8 burden of producing or calling any witnesses or
9 producing any evidence.

10 The testimony of the witness may be discredited
11 or impeached by showing that he previously made
12 statements which are inconsistent with his present
13 testimony. The earlier contradictory statements are
14 admissible only to impeach the credibility of the
15 witness, and not to establish the truth of the state-
16 ments. It is the province of the jury to determine the
17 credibility, if any, to be given the testimony of a
18 witness who has been impeached.

19 If a witness is shown knowingly to have testified
20 falsely concerning any material matter, you have the
21 right to disregard such witness' testimony in other
22 particulars and you may reject all the testimony of
23 that witness or give it such credibility as you may
24 think it deserves.

25 An act of omission is knowingly done if done

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77 1 voluntarily and intentionally, not because of mistake
2 or accident or innocent reason.
3

4 The testimony of the witness may be described or
5 impeached by showing that the witness has been convicted
6 of a felony, that is, of a crime punishable by imprison-
7 ment of a term of years. Prior conviction does not
8 render a witness incompetent to testify, but is merely
9 a circumstance which you may consider in determining
10 the credibility of the witness. It is the province of
11 the jury to determine the weight to be given to any
12 prior conviction as impeachment.

13 A defendant who wishes to testify, however, is
14 competent witness; and the defendant's testimony is to
15 be judged in the same way as that of any other witness.

16 The law permits a defendant, at his own request,
17 to testify on his own behalf. The testimony of an
18 individual defendant is before you. You must determine
19 how far it is credible. The personal interest which
20 every defendant has in the result of his case should
21 be determined in considering the credibility of his
22 testimony. You are instructed that interest creates
23 a motive for false testimony, that the greater the
24 interest, the stronger is the temptation, and that the
25 interest of a defendant is of a character possessed by

1
2 no other witness and is, therefore, a matter which may
3 seriously affect the credence that should be given to
4 his testimony.

5 The law does not compel a defendant in a criminal
6 case to take the witness stand and testify, and no
7 presumption of guilt may be raised, and no inference
8 of any kind may be drawn, from the failure of a
9 defendant to testify.

10 As stated before, the law never imposes upon a
11 defendant in a criminal case the burden or duty of
12 calling any witness or producing any evidence.

13 The law does not compel a defendant in a criminal
14 case to take the witness stand and testify, and no
15 presumption of guilt may be raised and no inference
16 of any kind may be drawn from the failure of a
17 defendant to testify.

18 As stated before, the law never imposes upon a
19 defendant in a criminal case the burden or duty of
20 calling any witnesses or producing any evidence.

21 Now, there has been testimony here to the previous
22 good character of the defendant. You should consider
23 such evidence of character together with all the other
24 facts with respect to the guilt or innocence of the
25 defendant. Evidence of good character may in itself

1
2 create a reasonable doubt where without such evidence
3 no reasonable doubt would have existed. But, if on
4 all the evidence you are satisfied beyond a reasonable
5 doubt that the defendant is guilty, a showing that he
6 has previously enjoyed a reputation of good character,
7 does not justify or excuse the offense and you should
8 not acquit a defendant merely because you believe he is
9 a person of good repute.

10 The testimony of a character witness is not to be
11 regarded by you as expressing the witness' personal
12 opinion of the defendant's character, nor is it to be
13 taken by you as the witness' opinion as to the guilt
14 or innocence of the defendant. The guilt or innocence
15 of the defendant is for you and you alone to determine.

16 It is the duty of the attorneys on each side of
17 the case to object when the other side offers testimony
18 or other evidence which the attorney believes is not
19 properly admissible. You should not show prejudice
20 against an attorney or his client because the attorney
21 has made objections.

22 Upon allowing the testimony or other evidence to
23 be introduced over the objections of any attorney, the
24 Court does not, unless expressly stated, indicate any
25 opinion as to the weight or effect of such evidence. As

1 stated before, the jurors are the sole judges of the
2 credibility of all the witnesses and the weight and
3 effect of all the evidence.
4

5 When the Court has sustained an objection to a
6 question addressed to a witness, the jury must dis-
7 regard the question entirely, and may not draw any
8 inference from the wording of it, or speculate as to
9 what the witness would have said if he had been permitted
10 to answer the question.

11 The fact that the Court has asked one or more
12 questions of a witness for clarification or understanding
13 of evidence is not to be taken by you in any way as
14 indicating that the Court has any opinion as to the
15 guilt or innocence of the defendant in this case and
16 you are to discuss no such inferences therefrom.

17 You are here to determine the guilt or innocence
18 of the accused from the evidence in the case. You are
19 not called upon to return a verdict as to the guilt or
20 innocence of any other person or persons. So, if the
21 evidence in the case convinces you beyond a reasonable
22 doubt of the guilt of the accused, you should so find,
23 even though you may believe one or more other persons
24 are guilty. But if any reasonable doubt remains in
25 your mind after impartial consideration of all the

1 evidence in the case, it is your duty to find the
2 accused not guilty.
3

4 The verdict must represent the considered judgment
5 of each juror. In order to return a verdict, it is
6 necessary that each juror agree thereto. Your verdict
7 must be unanimous. It is your duty, as jurors, to
8 confer with one another and to deliberate with a view
9 to reach an agreement if you can do so without violence
10 to individual judgment. Each of you must decide the
11 case for yourself, but do so only after impartial
12 consideration of the evidence in the case with your
13 fellow jurors. In the course of your deliberation,
14 do not hesitate to reexamine your own views, and change
15 your opinion, if convinced it is erroneous. But do not
16 surrender your honest conviction as to the weight or
17 effect of evidence, solely because of the opinion of
18 your fellow jurors or for the mere purpose of returning
19 a verdict.

20 Remember, at all times, you are not partisans.
21 You are judges, judges of the facts. Your sole
22 interest is to seek the truth from the evidence in the
23 case.

24 There is nothing peculiarly different in the way
25 a juror should consider the evidence in a criminal
case, from that in which all reasonable persons treat

1 any question depending upon evidence presented to them.
2 You are expected to use your good sense, consider the
3 evidence in the case for only those purposes for which
4 it has been admitted and give it a reasonable and fair
5 construction, in light of your common knowledge of the
6 natural tendencies and inclinations of human beings.
7

8 If the accused be accused guilty beyond reasonable
9 doubt, say so. If not guilty, say so.

10 Keep constantly in mind that it is a violation of
11 your sworn duty to base verdicts of guilty upon anything
12 other than the evidence in the case; and remember that
13 the law never imposes upon a defendant in a criminal
14 case the burden or duty of calling any witness or
15 producing any evidence.

16 If any reference by the Court or by counsel to
17 matters of evidence does not coincide with your own
18 recollection, it is your recollection which should
19 control during your deliberation.

20 The punishment provided by the law for the offense --
21 offenses charged in the indictment, in summation, is a
22 matter exclusively within the province of the Court and
23 should never be considered by the jury in any way, in
24 arriving at an impartial verdict as to the guilt or
25 innocence of the accused.

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Charge

1 five to seven or seven to five, one or the other way,
2 whatever it may be. If you are hopelessly deadlocked
3 after proper time for deliberation, write me a note to
4 such effect. If you reach a unanimous verdict, write
5 me a note to such effect. Don't tell me what is going
6 on. If you reach a unanimous verdict, announce it here
7 in open court. Now, we'll take a brief recess and we'll
8 get the deputy marshals up here so they'll be able to
9 assume control over you as a jury, and during that
10 brief recess I'll discuss the charge with the attorneys
11 and thereafter you will be reassembled here, the
12 marshal sworn and the alternates discharged and then
13 you can begin your deliberation, but not before then.

14 Don't discuss the case during this brief recess.

15 (Whereupon the jury left the courtroom.)

16 (Whereupon the following occurred in open court
17 outside the presence of the jury.)

18 MR. KRAMER: There is one thing, your Honor, did
19 that I think may be clarified cautiously depended the
20 application of the defendant to the other co-conspirators
21 Presswood and Grayson, and the instructions being read,
22 perhaps you could explain to the jury very clearly the
23 only testimony in this case --

24 THE COURT: I said that, I don't know how many
25

2 times.

3 MR. KRAMER: Then you would say --

4 THE COURT: I was reading the indictment.

5 But, of course, they are defendants in the case, and
6 they still have that status. This is jury is going
7 to ask for this indictment, you are going to have to
8 send the entire indictment to them because the overt
9 acts, I am sure they undertand it's only one defendant
10 on trial here.

11 MR. KRAMER: I have no objections to that.

12 THE COURT: I think it's clear.

13 MR. ROSENTHAUL: I have nothing.

14 (Whereupon the jury returned to the courtroom
15 and the following occurred in open court in the
16 presence of the jury.)

17 THE COURT: Since Juror No. 6 has now arrived,
18 I guess your time has come. Unfortunately, or
19 fortunately, I don't know which in your mind, your
20 services are no longer needed and you'll not take
21 part in the deliberation. You go with the thanks
22 of the Court. You should check in downstairs with
23 the Central Jury Part to see if they have any further
24 jury duty for you and what plans they have for you.
25 Your services are needed, believe it or not, as
evidenced by Juror No. 12 now, who took the place

1
2 of someone excused and you may well have been
3 called upon, thank you. Pick up anything you have
4 in the jury room before the other jurors get here,
5 now, Marshal, will you step forward, please.

6 THE CLERK: (Whereupon the marshal was sworn
7 by the clerk of the court.)

8 THE COURT: Now, ladies and gentlemen of the
9 jury, you may discuss the case.

10 (Whereupon the jury left the courtroom to
11 begin the deliberations.)

12 THE CLERK: Court's Exhibit 1 marked, jury
13 note. Court's Exhibit 2, jury note re: evidence,
14 marked.

15 Court's Exhibit 2, jury note, jury requests
16 Government's Exhibit, postal inspector's report on
17 Reverend Day, Reverend Day's statement to postal
18 inspectors, H. Melmot, informant on consent of both
19 parties, all Government's Exhibits and defendant's
20 exhibited was sent to the jury.

21 (Whereupon the jury entered the courtroom
22 and the following occurred in open court in the
23 presence of the jury.)

24 THE COURT: Ladies and gentlemen, we have
25 your note and he is prepared to read Postal Inspector

Schaefer's testimony to you. It takes some time, as you see, to locate this testimony and to get it prepared and that is the reason there has been this delay and one of the reasons I asked you not to have testimony reread unless it's absolutely necessary. Go ahead.

THE CLERK: Court's Exhibit 3, jury note re: testimony of Inspector Schaefer marked in evidence.

(Whereupon the reporter read back the desired and requested testimony.)

THE CLERK: Re: note, Court's Exhibit 4, jury note, verdict marked at 4:15 p.m.

THE COURT: All right, ladies and gentlemen, I have your note saying you have reached a verdict.

Mr. Foreman, would you mind rising and answering the questions put to you by Mr. Nims, the deputy clerk.

THE CLERK: Have you reached a verdict or haven't you?

Mr. Foreman, ladies and gentleman of the jury, have you agreed upon a verdict?

MR. FOREMAN: Yes.

THE CLERK: How do you find the defendant, Lamont B. Day, on Count 1 of the indictment?

1 THE FOREMAN: Guilty as charged.

2
3 THE CLERK: How do you find the defendant,
4 Lamont B. Day, on Count 8 of the indictment?

5 THE FOREMAN: Guilty as charged.

6 THE CLERK: As the Court has received your
7 verdict you say you find the defendant, Lamont B. Day
8 guilty on Count 1 of the indictment and that you find
9 the defendant, Lamont B. Day guilty on Count 8 of the
10 indictment, and so say you all.

11 THE COURT: Mr. Foreman, if you will be
12 seated, I'll ask the Clerk to call and ask each of
13 you whether that is your verdict. You don't have to
14 rise, just answer yes or no on the question put to you.

15 Ladies and gentlemen of the jury, you heard
16 your verdict as the Court has received it. You say
17 you find the defendant guilty on Count 1 of the
18 indictment and guilty on Count 8 of the indictment.
19 Juror No. 1, is that your verdict?

20 JUROR NO. 1: Yes.

21 THE CLERK: Juror No. 2, is that your verdict?

22 JUROR NO. 2: Yes.

23 THE CLERK: Juror No. 3, is that your verdict?

24 JUROR NO. 3: Yes.

25 THE CLERK: Juror No. 4, is that your verdict?

JUROR NO. 4: Yes.

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THE CLERK: Juror No. 5, is that your verdict?

JUROR NO. 5: Yes.

THE CLERK: Juror No. 6, is that your verdict?

JUROR NO. 6: Yes.

THE CLERK: Juror No. 7, is that your verdict?

JUROR NO. 7: Yes.

THE CLERK: Juror No. 8, is that your verdict?

JUROR NO. 8: Yes.

THE CLERK: Juror No. 9, is that your verdict?

JUROR NO. 9: Yes.

THE CLERK: Juror No. 10, is that your verdict?

JUROR NO. 10: Yes.

THE CLERK: Juror No. 11, is that your verdict?

JUROR NO. 11: Yes.

THE CLERK: Juror No. 12, is that your verdict?

JUROR NO. 12: Yes.

THE CLERK: Jury polled, your Honor.

THE COURT: Now, ladies and gentlemen, I am sure you now understand what a difficult task it is to serve as a juror. This case is no different than any other case except that it may be perhaps shorter than some, shorter than most, but you can tell it's still not an easy task to serve, particularly in a criminal case.

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You go with the thanks of the Court and of all members of the residents of this district which consists of some eight million people for whom you have performed a most valuable service as jurors.

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If you weren't here to perform this service our Government could not survive and I am certain you realize that. The jury system lies at the heart of our system of government and it's one we call upon our citizens as yourselves to perform and you have performed it and for that, and for your service and for your attention to the case the Court thanks you on behalf of all your fellow citizens.

13

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You should check out downstairs with the jury clerk with respect to any additional jury service you would be required to perform and you won't do anything today. Thank you very much.

17

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(Whereupon at this time the jury was excused and the case concluded.)

19

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(Whereupon the following occurred in open court outside the presence of the jury.)

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THE COURT: Now, counsel, Mr. Day, if you come up, please. Has probation been called on Mr. Mintz? And doing other things, what is the situation with respect to bail?

MR. KRAMER: The bail currently is, the

91 1 defendant is released on a \$25,000 personal re-
2 cognizance bond with a lien currently existing on
3 his house in Ohio. That lien has been filed at
4 this time, that was part of the direction of the
5 Court. I see no reason that bail shouldn't continue
6 with the lien remaining on the house. There was one
7 other problem that my understanding was that the
8 defendant was limited geographically to Ohio and
9 the Eastern District. We received information
10 through the defendant's lawyer and directly from
11 the defendant, as a matter of fact, he had traveled
12 two states south of this area. I don't know, I don't
13 know if he had reason to go there but it would be
14 breach of the bail conditions.

15 MR. ROSENTHAUL: Your Honor, could I extend
16 the limits of the bail to certain southern states
17 to which the defendant travels with the church?

18 THE COURT: What are the states?

19 THE WITNESS: Georgia, Mississippi, Alabama,
20 New Orleans, I don't have to go down there, it's the
21 once now until April, south of the Carolinas, Chicago
22 and here.

23 MR. ROSENTHAUL: South Carolina, Illinois,
24 Ohio, New York.

25 THE COURT: What do you say to that?

92 1

MR. KRAMER: The defendant has shown up before every appearance, so I can't say we have any problems, he is now convicted, of course, and it's a serious offense, conspiracy as well as mail fraud, on the house there is practically no mortgage on it, there is the \$25,000 recognizance bond, I would think it would be satisfactory perhaps if he were to check in once a week where the pre-trial service is as well.

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THE COURT: Do you know who his pre-trial service agent is, he of course is not here.

10

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MR. KRAMER: I can notify them of the Court's order.

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him.

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MR. KRAMER: What are the geographical limits?

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THE COURT: Illinois, Ohio, and South Carolina, New York and Connecticut and now you'll be notified perhaps six weeks hence, do we have a date from which

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1 we could notify him here?

2 MR. KRAMER: Your Honor, I was notified by the
3 probation they were starting to work on the sentence
4 reports on the other defendants. They didn't have
5 any date at that time.

6 THE COURT: Have you got an address for the
7 probation, if they get an address for you and you will
8 have to be responsible if you're out of the juris-
9 diction you are going to be responsible for any mail
10 that is sent by probation to your address, because
11 they will notify you to return here on the date six
12 weeks hence and you're not here on that date when
13 they notify you to appear, then a bench warrant will
14 be issued for your arrest and you'll be brought in
15 from wherever you are, you understand those circum-
16 stances. So, you better just stay in touch with
17 the pre-trial service, but also the probation.

18 Understand those, I advise you you should go
19 with your counsel to the probation department, get
20 your pre-sentence report started so I'll have a full
21 report of four or five weeks hence and before sentence
22 actually takes place. And of course, you will be able
23 to see that.

24 How old is Mr. Day?

25 THE WITNESS: Forty-four.

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1 MR. ROSENTHAUL: Your Honor, might I reserve
2 all motions to the time of sentence?

3 THE COURT: You may, and if you wish to make
4 them in writing, of course you will have to make
5 them at least eight days in advance to give me and
6 the United States attorney a chance to reply, and if
7 you're going to make them orally on the day of the
8 sentence, the burden will be on you to remind the
9 Court that they had not been made, because I cannot
10 keep in my head which cases there where the motions
11 have been reserved and serve notice on you, now that
12 that burden is on you, otherwise you're going to wait.

13 MR. ROSENTHAUL: Thank you.

14 Whereupon at this time the trial was concluded.
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DEPT. OF JUSTICE
U. S. A. MAY 6 11 41 AM '77
EAST. DIST. N. Y.

Paula
Geramone

2 Gas Recd
this date

